

Amendment
Review

Minority OTP - AM (3) - SC, SH, JD
(Majority OTP - AM (9),
Minority ONTP (1))

LD 719

Draft Minority Amendment to LD 719 (LD 2197)

Drafter: JO

Date: June 14, 2019

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Minority Committee Amendment
LD 719, An Act to Amend the Adult Use Marijuana Law

Amend the bill by striking the title and inserting a new title to read: 'An Act to Improve the Regulation of Adult Use Marijuana and the Safety of Marijuana and Marijuana Products.'

This amendment incorporates the majority report and adds to it the following:

Amend the bill by deleting everything after the enacting clause and before the summary and inserting the following:

PART A

Sec. A-1. 28-B MRSA §407 is enacted to read:

§ 407. Revenue allocation to municipalities

1. Local Government Marijuana Revenue Fund established. To assist in offsetting negative effects on local resources of local regulation and enforcement of adult use marijuana laws, there is established the Local Government Marijuana Revenue Fund, referred to in this section as "the fund."

2. Fund sources. The fund receives money transferred to the fund pursuant to Title 36, section 1818, subsection 2 and Title 36, section 4925, subsection 2.'

3. Distribution of funds. The Treasurer of State shall distribute the balance in the fund on the 20th day of each month. Money in the fund must be distributed to each municipality that has authorized, pursuant to sections 401 and 403, a marijuana establishment within the municipality, in proportion to the ratio of revenues generated pursuant to section 1001 and Title 36, section 1811 by all marijuana establishments operating within the municipality to the revenues generated pursuant to section 1001 and Title 36, section 1811 by all marijuana establishments operating within the State.

4. Unorganized and deorganized areas. For purposes of municipal marijuana revenue distribution pursuant to this section, unorganized and deorganized areas must be treated as if they are municipalities.

Sec. A-2. 36 MRSA §1818, as enacted by PL 2017, c. 409, Pt. D, §4, is repealed and the following enacted in its place:

§ 1818. Tax on adult use marijuana and adult use marijuana products

All sales tax revenue collected pursuant to section 1811 on the sale of adult use marijuana and adult use marijuana products must be deposited into the General Fund, except that, on or before the last day of each month, the State Controller shall transfer:

1. Adult Use Marijuana Public Health and Safety Fund. Twelve percent of the sales tax revenue reported to the State Tax Assessor as due during the preceding month pursuant to section 1811 to the Adult Use Marijuana Public Health and Safety Fund established under Title 28-B, section 1101; and

2. Local Government Marijuana Revenue Fund. Twenty-five percent of the sales tax revenue reported to the State Tax Assessor as due during the preceding month pursuant to section 1811 to the Local Government Marijuana Revenue Fund established under Title 28-B, section 407 calculated after the transfer pursuant to subsection 1 and after the subtraction of the costs of the State Tax Assessor in administering this subsection. For the purposes of this subsection, "costs of the State Tax Assessor in administering this subsection" means, for each month in the 12-month period after the effective date of this section, the actual and anticipated cost to the State Tax Assessor of administering this subsection and, in all subsequent months, the previous month's actual cost of administering this subsection.

Sec. A-3. 36 MRSA §4925, as enacted by PL 2019, c. 231, Pt. B, §7, is repealed and the following enacted in its place:

§ 4925. Application of excise tax revenue

All excise tax revenue collected by the assessor on the sale of adult use marijuana pursuant to this chapter must be deposited into the General Fund, except that, on or before the last day of each month, the assessor shall transfer:

1. Adult Use Marijuana Public Health and Safety Fund. Twelve percent of the excise tax revenue received during the preceding month pursuant to this chapter to the Adult Use Marijuana Public Health and Safety Fund established under Title 28-B, section 1101; and

2. Local Government Marijuana Revenue Fund. Twenty-five percent of the excise tax revenue received during the preceding month into the Local Government Marijuana Revenue Fund established under Title 28-B, section 407 calculated after the transfer pursuant to subsection 1 and after the subtraction of the costs of the assessor in administering this subsection. For the purposes of this subsection, "costs of the assessor in administering this subsection" means, for each month in the 12-month period after the effective date of this section, the actual and anticipated cost to the assessor of administering this subsection and, in all subsequent months, the previous month's actual cost of administering this subsection.'

Sec. A-4. Appropriations and allocations. The following appropriations and allocations are made.

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF

Local Government Marijuana Revenue Fund N326

Initiative: Provides allocation to distribute funds to municipalities to assist in offsetting negative effects on local resources of local regulation and enforcement of adult use marijuana laws.

(To be written by OFPR)

Revenue Services, Bureau of 0002

Initiative: Establishes one Senior Tax Examiner position to process transfers of sales and excise tax receipts on adult use marijuana.

(To be written by OFPR)

PART B

Sec. B-1. 28-B MRSA §602, subsection 1 is amended to read:

1. Scope of mandatory testing. Mandatory testing of adult use marijuana and adult use marijuana products under this section must include, but is not limited to, testing for:

- A. Residual solvents, poisons and toxins;
- B. Harmful chemicals;
- C. Dangerous molds and mildew;
- D. Harmful microbes, including, but not limited to, *Escherichia coli* and salmonella;
- E. Pesticides, fungicides and insecticides; and
- F. THC potency, homogeneity and cannabinoid profiles to ensure correct labeling.

~~The department may temporarily waive mandatory testing requirements under this section for any contaminant or factor for which the department has determined that there exists no licensed testing facility in the State capable of and certified to perform such testing.~~

PART C

Sec. C-1. 28-B MRSA §503, subsection 2 is amended to read:

2. Certification; accreditation and provisional licensure; compliance with operational and technical requirements. A testing facility may not commence ~~or continue operation, or after having been certified continue operation,~~ unless the testing facility:

A. Is certified for operation by the Department of Health and Human Services, Maine Center for Disease Control and Prevention, in accordance with rules adopted by the department after consultation with the Department of Health and Human Services, Maine Center for Disease Control and Prevention, which must allow for inspection of the proposed or operational testing facility by the department and the Department of Health and Human Services, Maine Center for Disease Control and Prevention;

A-1. Is certified for operation by the federal Department of Health and Human Services, Center for Disease Control, in accordance with regulations adopted by the federal Department of Health and Human Services;

B. Except as otherwise provided in this paragraph, is accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization by a 3rd-party accrediting body or is certified, registered or accredited by an organization approved by the department. The department shall adopt rules regarding the scope of certification, registration or accreditation required for licensure of a testing facility.

(1) The department may issue a full testing facility license to an applicant that meets all applicable requirements of this chapter and rules adopted pursuant to this chapter and that has obtained accreditation pursuant to standard ISO/IEC 17025 of the International Organization for Standardization from a 3rd-party accrediting body or that is certified, registered or accredited by an approved organization.

~~(2) The department may issue a provisional testing facility license to an applicant that otherwise meets all applicable requirements of this chapter and rules adopted pursuant to this chapter and that has applied for but not yet obtained accreditation from a 3rd-party accrediting body or that has applied for but not yet obtained certification, registration or accreditation from an approved organization. The department may not renew a provisional testing facility license more than once.~~

An active full ~~or provisional~~ testing facility license may not be issued by the department to an applicant until the applicant satisfies all applicable requirements of section 205, subsection 4; and

C. Is determined by the department to meet all operational and technical requirements for testing facilities under this chapter and the rules adopted under this chapter.

PART D

Sec. D-1. 28-B MRSA §202 is amended to read:

§202. General licensing criteria

An applicant for a license to operate a marijuana establishment must meet each of the

following requirements, if applicable. Except as otherwise provided in this section, if the applicant is a business entity, every officer, director, manager and general partner of the business entity and every owner and investor of any type and in any amount in the business entity must meet each of the requirements of this section. An applicant shall disclose in or include with its application the names and addresses of the applicant and all natural persons and business entities having a direct or indirect financial interest, all natural persons and business entities having an ownership interest of any type and in any amount in the business entity, whether direct, indirect, limited or unlimited, and all natural persons and business entities having an investment interest of any type and in any amount in the business entity in the applied-for license and the nature and extent of the financial interest held by each person or entity and, if applicable, the nature and extent of any financial interest the person or entity has in any other license applied for or issued under this chapter.

1. Age. The applicant must be at least 21 years of age. If the applicant is a business entity, every officer, director, manager and general partner of the business entity must be at least 21 years of age.

2. Resident. If the applicant is a natural person, the applicant must be a resident. If the applicant is a business entity:

A. Every officer, director, manager and general partner of the business entity and every owner and investor of any type or amount in the business entity must be a natural person who is a resident; and

B. ~~A majority~~ All of the shares, membership interests, partnership interests or other equity ownership interests as applicable to the business entity must be held or owned by natural persons who are residents or business entities whose owners are all natural persons who are residents.

~~This subsection does not apply to an applicant for a testing facility license.~~

3. Incorporated in State. If the applicant is a business entity, the business entity must be incorporated in the State or otherwise formed or organized under the laws of the State.

4. No disqualifying drug offense. The applicant may not have been previously convicted of a disqualifying drug offense.

5. Not employee of state agency. The applicant may not be employed by the department or any other state agency with regulatory authority under this chapter or the rules adopted pursuant to this chapter.

6. Not law enforcement officer or corrections officer. The applicant may not be a law enforcement officer; a corrections officer as defined in Title 25, section 2801-A, subsection 2; or any other natural person subject to the certification requirements of Title 25, chapter 341.

7. No license revocation. The applicant may not have had a license previously issued under this chapter revoked.

8. No medical registry identification card or registration certificate revocation. The applicant may not have had a registry identification card or registration certificate previously issued pursuant to the Maine Medical Use of Marijuana Act revoked.

9. No revocation of other state marijuana license, permit, certificate or other

government-issued authorization. The applicant may not have had a license, permit, certificate or other government-issued authorization issued in another jurisdiction allowing the cultivation, manufacture, testing or sale of marijuana or marijuana products revoked.

10. No outstanding court-ordered payments. A license may not be issued to an applicant that has any outstanding payments due in this State on court-ordered fines, court-appointed attorney's fees or court-ordered restitution.

11. Criminal history record check. The applicant must have submitted to a criminal history record check in accordance with the requirements of section 204.

12. Compliance with application process; no false statement of material fact. The applicant must have completed all application forms required by the department fully and truthfully and complied with all information requests of the department relating to the license application. A license may not be issued to an applicant that has knowingly or recklessly made any false statement of material fact to the department in applying for a license under this chapter. The department shall revoke the license of a licensee pursuant to subchapter 8 if, subsequent to the issuance of the license, the department determines that the licensee knowingly or recklessly made a false statement of material fact to the department in applying for the license.

PART E

Sec. E-1. 28-B MRSA §701, subsection 1-A is enacted to read:

1-A. Labeling regarding health effects. All marijuana and marijuana products to be sold or offered for sale by a licensee to a buyer or potential buyer must be labeled in a manner that displays prominently to the buyer or potential buyer that:

A. Inhaling, smoking, eating, using or otherwise consuming marijuana or marijuana products has been connected to negative health effects, including but not limited to schizophrenia, mental illness, psychosis, disrupted learning and memory and interruption of the normal development of the brain; and

B. Inhaling, smoking, eating, using or otherwise consuming marijuana or marijuana products has been connected to additional negative health effects as determined by the Department of Health and Human Services, Center for Disease Control and Prevention.

The Department of Administrative and Financial Services shall adopt rules to implement this subsection. Rules adopted pursuant to this subsection are major substantive rules as defined by Title 5, chapter 375, subchapter 2-A.

PART F

(Insert here sections 1 through 7 of the majority report)

PART G

Sec. G-1. Department of Administrative and Financial Services, Office of Marijuana Policy; approval of final adoption. Final adoption of Chapter 1: Adult Use of Marijuana, A a provisionally adopted major substantive rule of the Department of Administrative and Financial Services, Office of Marijuana Policy, that was submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, outside the legislative rule acceptance period on June 5, 2019 is authorized only if the following changes are made:

(Insert here from the majority report section 8 on rule changes.)

C. The rule must be amended in the portion of the entitled “General,” to delete the sentence that reads: “The Department is not responsible or liable for the actions of marijuana establishments under these rules;”

2. The rule must be amended in section 11 to delete the last paragraph and insert a new paragraph that states that the Department may not waive testing requirements in the rules for any reason;

3. The rule must be amended in Section 11.1.2 to add new paragraphs that:

A. Require that all marijuana and marijuana products must be labeled in a manner that displays prominently to the potential buyer that inhaling, smoking, eating, using or otherwise consuming marijuana or marijuana products has been connected to negative health effects, including but not limited to schizophrenia, mental illness, psychosis, disrupted learning and memory and interruption of the normal development of the brain; and

B. Requires that all marijuana and marijuana products must be labeled in a manner that displays prominently to the potential buyer the risks connected to inhaling, smoking, eating, using or otherwise consuming marijuana or marijuana products that have been found to exist by the Department of Health and Human Services, Center for Disease Control and Prevention;

4. The rule must be amended in section 11.5.2 to add to the labeling requirements for the retail sale of topical marijuana products new paragraphs that:

A. Require that all topical marijuana products must be labeled in a manner that displays prominently to the potential buyer that inhaling, smoking, eating, using or otherwise consuming marijuana or marijuana products has been connected to negative health

effects, including but not limited to schizophrenia, mental illness, psychosis, disrupted learning and memory and interruption of the normal development of the brain; and

B. Requires that all topical marijuana products must be labeled in a manner that displays prominently to the potential buyer the risks connected to inhaling, smoking, eating, using or otherwise consuming marijuana or marijuana products that have been found to exist by the Department of Health and Human Services, Center for Disease Control and Prevention;

5. The rule must be amended in section 2.3.1(B), and section 2.5.1 to be consistent with Title 28-B, section 202 requiring all owners and investors of any type and in any amount to be residents of the State of Maine.

6. The rule must be amended in the title to section 2.6, Application for Active License, or Provisional Testing License, and in the text of section 2.6 to be consistent with section 503, subsection 2 in which there is no provisional licensing for testing facilities.

SUMMARY

This amendment is a minority amendment to the bill. This amendment amends the law on adult use of marijuana and provides conditional approval for provisionally adopted major substantive rules regarding adult use of marijuana as follows.

1. In Part A the amendment provides to the municipalities in which adult use marijuana cultivation facilities and retail stores are located 25% of the excise tax and sales tax from adult use of marijuana for use in offsetting the negative effects on local resources of local regulation and enforcement of adult use marijuana laws.

2. In Part B the amendment repeals from the adult use of marijuana law the provision of law that allows the Department of Administrative and Financial Services to temporarily waive mandatory testing requirements under some circumstances.

3. In Part C the amendment requires certification of an adult use marijuana testing facility by the federal Department of Health and Human Services, Center for Disease Control and repeals from the law provisional licensure for testing facilities.

4. In Part D the amendment amends the general licensing criteria for all types of adult use marijuana establishments except testing facilities and requires that all investors and owners, of any type and in any amount, be Maine residents. The amendment repeals from the law an exception that states that the general licensing criteria do not apply to licensed testing facilities.

5. In Part E the amendment requires all marijuana and marijuana products to be sold or offered for sale to a consumer must have labels that warn of the connection of marijuana to negative health effects, including but not limited to schizophrenia, mental illness, psychosis, disrupted learning and memory and interruption of the normal development of the brain and

other negative health effects as determined by the Department of Administrative and Financial Services.

6. In Part F the amendment (insert here the summary of the majority report, sections 1 through 7).

7. In Part G the amendment authorizes, subject to the incorporation of specified amendments, final adoption of Chapter 1: Adult Use of Marijuana, a major substantive rule of the Department of Administrative and Financial Services, Office of Marijuana Policy, that was submitted to the Legislature for review on June 5, 2019.

**129th MAINE LEGISLATURE****LD 719****LR 2197(03)****An Act To Amend the Adult Use Marijuana Law****Fiscal Note for Bill as Amended by Committee Amendment " "****Committee: Veterans and Legal Affairs****Fiscal Note Required: Yes**

Fiscal Note

	FY 2019-20	FY 2020-21	Projections FY 2021-22	Projections FY 2022-23
Net Cost (Savings)				
General Fund	\$1,051,520	\$3,800,600	\$5,296,600	\$7,408,600
Appropriations/Allocations				
General Fund	\$83,520	\$104,600	\$104,600	\$104,600
Other Special Revenue Funds	\$968,000	\$3,696,000	\$5,192,000	\$7,304,000
Revenue				
General Fund	(\$968,000)	(\$3,696,000)	(\$5,192,000)	(\$7,304,000)
Other Special Revenue Funds	\$968,000	\$3,696,000	\$5,192,000	\$7,304,000

Fiscal Detail and Notes

Provisions in this bill would transfer 25% of sales and excise tax receipts to the Local Government Marijuana Revenue Fund (LGMRF). The bill includes an Other Special Revenue Funds allocation of \$968,000 in fiscal year 2019-20 and \$3,696,000 in fiscal year 2020-20 to allow for the distribution of the amounts credited to the LGMRF. Transferring sales and excise tax receipts to the LGMRF will reduce revenue to the General Fund by the same amounts, \$968,000 in fiscal year 2019-20 and \$3,696,000 in fiscal year 2020-21.

The bill includes ongoing General Fund appropriations to the Department of Administrative and Financial Services of \$78,520 in 2019-20 and \$104,600 in fiscal year 2020-21 for one Senior Tax Examiner position to process transfers of sales and excise tax receipts on adult use marijuana. Another \$5,000 is appropriated in the first year for one-time All Other costs to update sales reports and create an excise tax report to facilitate distribution to municipalities.

Other provisions in this bill regarding ownership requirements may result in litigation which could incur additional costs and delay implementation. Such a delay would decrease anticipated revenue to the State and the distribution of funds.

Sec. Appropriations and allocations.

The following appropriations and allocations are made.

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF**Local Government Marijuana Revenue Fund N326**

Initiative: Provides allocation to distribute funds to municipalities to assist in offsetting negative effects on local resources of local regulation and enforcement of adult use marijuana laws.

OTHER SPECIAL REVENUE FUNDS	2019-20	2020-21
All Other	\$968,000	\$3,696,000
OTHER SPECIAL REVENUE FUNDS TOTAL	\$968,000	\$3,696,000

Revenue Services, Bureau of 0002

Initiative: Establishes one Senior Tax Examiner position to process transfers of sales and excise tax receipts on adult use marijuana.

GENERAL FUND	2019-20	2020-21
POSITIONS - LEGISLATIVE COUNT	1,000	1,000
Personal Services	\$78,520	\$104,600
All Other	\$5,000	\$0
GENERAL FUND TOTAL	\$83,520	\$104,600

**ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF
DEPARTMENT TOTALS**

	2019-20	2020-21
GENERAL FUND	\$83,520	\$104,600
OTHER SPECIAL REVENUE FUNDS	\$968,000	\$3,696,000
DEPARTMENT TOTAL - ALL FUNDS	\$1,051,520	\$3,800,600